THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.16619 OF 2007

DATED: 07-08-2007

Between :

1. Smt. Sunkara Narayanamma and another… Petitioners

And

1. Union Bank of India, rep. By its Branch Manager, Koyyalagudem Branch, W.G. District.,
And another. .. Respondents

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ORDER :

The petitioners herein are the guarantors in respect of the loan availed by the one Molisetty Ramadevi from the 1st respondent Bank. It is stated that an equitable mortgage was created in respect of the immoveable property belonging to the petitioners herein as security to the loan availed from the 1st respondent Bank. Since the borrower committed default in repayment of the debt, the 1st respondent Bank having invoked the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Securitisation Act') issued a demand notice under Section 13 (2) of the Securitisation Act on 9-2-2007 calling upon the petitioners to discharge the amounts due under the loan account. Since there was no response the impugned notice dated 26-7-2007 was issued under Section 13(4) of the Securitisation Act calling upon the petitioners to hand over the possession of the secured assets. The said possession notice dated 26-7-2007 is under challenge in this writ petition contending inter alia that no demand notice as required under Section13 (2) of the Securitisation Act was served on them. It is also contended that as a matter of fact the principal borrower has already made substantial amounts and therefore the 1st respondent is not justified in proceeding against the secured assets belonging to the guarantors under sub-section (4) of Section 13 of the Securitisation Act, without proceeding against the unit belonging to the principal

borrower.

So far as the allegation that there was no demand notice as required under the provisions of the Act is concerned, Sri G. Vasantha Rayudu, the learned Counsel who accepted notice for the 1st respondent under instructions submitted that the notice under Section 13 (2) of the Securitisation Act was served on both the petitioners on 22-2-2007.

The other contentions raised by the petitioners claiming that since the principal borrower has already made substantial payments the 1st respondent ought not to have proceeded against the secured assets cannot be enquired into and decided by this Court in a writ proceeding. Since under Section 17 of the Securitisation Act an alternative and efficacious remedy is provided by making an application before the Debts Recovery Tribunal having jurisdiction, if the petitioners are aggrieved on any ground whatsoever they ought to have availed the said remedy. Without exhausting the said alternative remedy under the Statue, the petitioners cannot maintain this writ petition.

Accordingly, the writ petition is disposed of granting leave and liberty to the petitioners to work out the alternative remedy available under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. However, having regard to the facts and circumstances and particularly the property in question is a residential building, there shall be a direction to maintain *status quo* obtaining as on today as to the nature and possession of the property in question shall be maintained for a period of two weeks from today.

Writ Petition is accordingly disposed of. No costs.

G. ROHINI, J.

Dt. 07–08-2007
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